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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/686,831	10/11/2000	Larry J. Eshelman	US000251	5772
7590	05/07/2004		EXAMINER	
PHILIPS ELECTRONICS NORTH AMERICAN XORP 580 WHITE PLAINS RD TARRYTOWN, NY 10591			BUI, KIEU OANH T	
			ART UNIT	PAPER NUMBER
			2611	9

DATE MAILED: 05/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/686,831

Applicant(s)

ESHELMAN ET AL.

Examiner

KIEU-OANH T BUI

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 October 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-23 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8, 10-11, and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dureau (U.S. Patent No. 6,513,160 B2) in view of Williams et al. (US Patent No. 6,184,937/ or “Williams”).

Regarding claims 1 and 10, Dureau discloses “a method of providing an animated viewing companion on a display while a viewer is watching a program” (as illustrated in Fig. 4a), the method comprising the steps of: “displaying a video program on the display”, i.e., a television or video program can be displayed on the display screen 21 (col. 3/line 45 to col. 4/line 43 for receiving video broadcasting from a broadcast station); “generating an animated character on a portion of the display as the animated viewing companion”, i.e., a genie is generated as an animated character on a portion of the display as the animated companion for the viewer (Fig. 4a, and col. 6/lines 22-36); “monitoring at least one signal corresponding to the program being watched; determining, based on the monitoring performed in the monitoring step,

when a first predetermined event has occurred; and controlling the animated character based on the determination made in the determining step”, i.e., a predetermined value or ranges of values is used to compare the user’s interaction and the user’s time spending on the associated program, and based on that determination, the animated character can be controlled such as more healthy or less healthy, different colors, thinner etc. (col. 6/line 22 to col. 7/line 5).

Dureau does not mention the step of “wherein the first predetermined event comprises at least one of an audio and video event in the program being watched” ...” so that the animated character responds to the at least one of an audio and video event in the program being watched”; however, Williams teaches a technique that an animated character or an inserted indicia can react or produces audio sound accordingly to a live or broadcast program with appropriate audio tones synchronizing to the particular situation of the broadcast program, for instance, a suitable phrase can be heard from a cartoon character if a sound of the crack of the bat of a baseball game or a suitable sound of the injured insert could be added if the insert appear to be hit by the ball while the viewer is watching the program (Williams, col. 2/lines 30-67 & col. 5/lines 10-50).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dureau’s system with Williams’s technique of having an animated character responses or reacts to some predetermined audio event from the broadcast program while watching the program in order to provide the enhanced reaction from the animated character, i.e., as to act surprised and to laugh accordingly based on these predetermined audio as taught by Williams. The motivation for doing this is to provide an interesting and interactive character appeared as if it is actually part of the original video scene, and it is also an important aspect of the video technology as disclosed by Williams.

As for claim 2, in further view of claim 1, Dureau further discloses “comprising the step of: determining, based on the monitoring performed in the monitoring step, when a second predetermined event has occurred, wherein, in the controlling step, control of the animated character is also based on the determination that the second predetermined event has occurred”, i.e., offer to include information on “special powers” which the genie character has obtained through the viewer’s interaction with advertising promotions regarding as the second predetermined event has occurred (col. 7/lines 25-43).

As for claim 3, in view of claim 1, Dureau discloses “wherein, in the displaying step, the video program is displayed in a first predetermined region of the display, and wherein, in the generating step, the animated character is generated in a second predetermined region of the display”, i.e., the video program is displaying on the TV screen 21 for the viewer in a first predetermined region of the display—on the portion without the genie character, and the animated character is generated on a portion of the display on a lower right corner of the display screen as in a second predetermined region of the display (Fig. 4a, and col. 6/lines 22-36).

As for claims 4-6, in view of claim 1, Dureau further discloses “wherein the at least one signal monitored in the monitoring step comprises an audio signal”, “wherein the at least one signal monitored in the monitoring step comprises an audio signal and a video signal”, and “wherein the at least one signal monitored in the monitoring step comprises a video signal”, i.e., interactive applications gather audio and video portions of television programs combined with interactive graphics and audio before transmitting to television 21 (col. 6/lines 4-21) and the interaction applications is used to monitor the user interaction and define the genie’s characteristics (col. 7/lines 5-24).

As for claim 7, in further view of claim 1, Dureau further discloses “comprising the steps of: accepting at least one input from the user; and controlling the animated character based on the inputs accepted in the accepting step”, i.e., user can input and control the animated character as he/she can hide it, or the genie can be set up by the viewer (col. 6/lines 31-36 & col. 7/lines 36-67).

As for claim 8, in view of claim 1, Dureau further discloses “wherein a behavior of the animated character depends on a cumulative history of inputs accepted from the user” (col. 7/lines 36-43 as a health index reflects the amount of time the viewer spends watching the associated program- based on a viewing history of viewer or a cumulative history of inputs from the viewer).

As for claim 11, in view of claim 10, Dureau inherently discloses “wherein the signal corresponding to the audio component of the program is an analog signal”, i.e., signal or video signal to television 21 including the signal corresponding to the audio component of the program may be in any suitable format such as for analog signal NTSC or (digital signal) HDTV (col. 4/lines 33-39).

Regarding claims 12 and 13, in view of claim 10, Dureau does not disclose the step of “wherein the first predetermined audio event comprises a sudden loud sound, and wherein, based on the determination of when the first predetermined audio event has occurred, the animated character is controlled, in the controlling step, to act surprised”; and “wherein the first predetermined audio event comprises a laughing sound, and wherein, based on the determination of when the first predetermined audio event has occurred, the animated character is controlled, in the controlling step, to laugh”; however, Williams teaches to introduce a technique that an

animated character or an inserted indicia can act or produces audio sound accordingly to a live or broadcast program with appropriate audio tones synchronizing to the particular situation of the broadcast program, for instance, a suitable phrase can be heard from a cartoon character if a sound of the crack of the bat of a baseball game or a suitable sound of the injured insert could be added if the insert appear to be hit by the ball (Williams, col. 2/lines 30-67). In addition, the Examiner takes Official Notice that it is obvious for one to modify William's teaching technique of using audio or sound of an animated character synchronizing with a corresponding broadcast program, e.g., the animated character is acting surprised if a predetermined loud sound is heard and to laugh if a laughing sound is occurred. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dureau's system with Williams's technique of altering the sound or adding the sound of an insert character such as an animated character in response to some predetermined audio event from the broadcast program such as a sudden loud sound and a laughing sound in order to provide the reaction from the animated character as to act surprised and to laugh accordingly based on these predetermined audio as taught by Williams. The motivation for doing this is to provide an interesting and interactive character appear as if it is actually part of the original video scene, and it is also an important aspect of the video technology as disclosed by Williams.

Regarding claim 15, Dureau discloses "a method of providing an animated character on a display while a viewer interfaces with a program recommendation system", i.e., an animated character as a genie displaying on a portion of a display screen and the genie reflects a program recommendation system (Fig. 4a, and col. 2/line 45 to col. 3/line 13), the method comprising the steps of: "generating an animated character on the display" (as illustrated in Fig. 4a); "accepting

a selection of a program from a user; comparing the selection accepted in the accepting step to a stored profile, wherein the stored profile is based on previously made program selections; and controlling the animated character based on the comparison made in the comparing step”, i.e., user selection based on stored data profile within the set top box, and the viewer’s history viewing is being compared and checked, and the healthy index of the animated character genie can be changed based on this comparison (Fig. 5, and col. 7/lines 25-67).

As for claim 16, in view of claim 15, Dureau further discloses “wherein the comparing step comprises the step of determining whether the selection accepted in the accepting step is consistent with the stored profile; and wherein, in the controlling step, the animated character is controlled to generate an approval response when it is determined, in the determining step, that the selection is consistent with the stored profile”, i.e., the animated character genie is controlled to generate an approval response such as he is in a preferred state, for instance, healthy and smiling face, if the selection from the viewer corresponds to the viewer’s history viewing profile (col. 6/lines 37-65 & col. 7/lines 35-43).

As for claim 17, in view of claim 16, Dureau further discloses “wherein, a degree of consistency of the selection with the stored profile is determined in the determining step; and wherein, in the controlling step, the animated character is controlled to generate one of a plurality of approval responses indicating different degrees of approval depending on the degree of consistency of the selection with the stored profile”, i.e., different degrees of approval such as more “special powers” or genie grows bigger or gets healthier depending on consistency of the selection of the viewer/user with the stored profile (col. 6/line 52 to col. 7/line 5; col. 7/lines 35-43; and col. 8/lines 1-28).

As for claim 18, in view of claim 16, Dureau further discloses “wherein the comparing step comprises the step of determining whether the selection accepted in the accepting step is inconsistent with the stored profile; and wherein, in the controlling step, the animated character is controlled to generate a disapproval response when it is determined, in the determining step, that the selection is inconsistent with the stored profile”, i.e., the animated character genie is controlled to generate a disapproval response such as the genie in a less preferred state, sick state, a less healthful appearance and a frowning face or die, when it is determined, that, the viewer/user makes selection inconsistently with the stored profile (Fig. 5, and col. 6/line 37 to col. 7/line 57).

As for claim 19 (same as claim 18), in view of claim 15, Dureau further discloses “wherein the comparing step comprises the step of determining whether the selection accepted in the accepting step is inconsistent with the stored profile; and wherein, in the controlling step, the animated character is controlled to generate a disapproval response when it is determined, in the determining step, that the selection is inconsistent with the stored profile”, i.e., the animated character genie is controlled to generate a disapproval response such as the genie in a less preferred state, sick state, a less healthful appearance and a frowning face or die, when it is determined, that, the viewer/user makes selection inconsistently with the stored profile (Fig. 5, and col. 6/line 37 to col. 7/line 57).

4. Claims 9, 14, and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dureau (U.S. Patent No. 6,513,160 B2) in view of Williams et al. (US Patent No. 6,184,937/ or “Williams”) and Best (US Patent No. 5,393,073).

Regarding claims 9 and 14, in further view of claims 1 and 10 above, Dureau does not clearly discloses “wherein the animated character generated in the generating step has its back facing the viewer, and wherein the controlling step comprises the step of turning the animated character so that its face faces the viewer”, i.e., yet the genie may be movably animated or it may behave in any manner for the viewer’s interests (col. 6/lines 22-36) that indicates the genie can move or turn in any manner, even appear or disappear, shrink or grow; therefore, the viewer can set up the genie has its back facing the viewer as first generated and then the viewer can turn the genie so that its face faces the viewer in the controlling step. Williams teaches the animated character responds to the at least one of audio and video event in the program being watched as disclosed earlier in claim 1 above.

Furthermore, in a same field of controlling animated characters, Best teaches that each animated character can perform action and talking just like human being with movements, turning its back to the viewer or facing its faces to the viewer (as illustrated in Best, Fig. 1, col. 6/lines 30 too col. 7/line 28, with animated character 17 for its back to the viewer and animated character 18 with its face faces the viewer; or in Fig. 5, see last figure for one (guy) character turns its back to the viewer while before he faces the viewer). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dureau and Williams’ technique with well-known technique as turning a character’s back and its faces toward the viewer in order to show an interaction from the animated character as if a “live” interactive icon in response to the controlling step from the viewer as desired.

As for claims 20 and 22, Best teaches this limitation as the user chooses to interact in an animation game wherein a plurality of other animations can be displayed from a normal TV watching (see Figs. 1-10 for a series of animation with dialogs).

As for claims 21 and 23, Dureau inherently teaches this limitation for showing the motion of the genie “including a frighten animation, a happy animation, and a laughing animation” as the animated character genie is controlled to generate a disapproval response such as the genie in a less preferred state, sick state, a less healthful appearance and a frowning face or die, when it is determined, that, the viewer/user makes selection inconsistently with the stored profile (Fig. 5, and col. 6/line 37 to col. 7/line 57).

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9306, (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krista Kieu-Oanh Bui whose telephone number is (703) 305-0095. The examiner can normally be reached on Monday-Friday from 9:00 AM to 6:30 PM, with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile, can be reached on (703) 305-4380.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.



VIVEK SRIVASTAVA
PRIMARY EXAMINER

Krista Bui
Art Unit 2611
April 29, 2004